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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

CARY WATSON,

Plaintiff and Appellant,

v.

DEPARTMENT OF MOTOR VEHICLES,

Defendant and Respondent.

C082920

(Super. Ct. No.
34201580002115CUWMGDS)

In May 2015, the Department of Motor Vehicles (DMV) revoked Cary Watson's vehicle salesperson license (license) on five grounds. These five grounds were based on Watson (1) violating Vehicle Code consignment laws, (2) providing false statements on his application for renewal of his license in July 2010, (3) providing false statements on his application for renewal of his license in September 2011, (4) masterminding a scheme to defraud Allstate Insurance Company, and (5) intimidating a witness to his insurance fraud.

To challenge the revocation of his license, Watson filed a petition for writ of mandate in the trial court. The trial court denied the writ petition on grounds Watson violated vehicle consignment laws and gave false statements on his renewal application. Finding these two bases were sufficient to sustain the DMV's license revocation, the superior court declined to address the other three grounds.¹

On appeal, Watson contends (1) the grounds for revocation based on violation of vehicle consignment laws and giving false statements were not supported by sufficient evidence, (2) res judicata and collateral estoppel precluded the DMV from reusing his false statements and vehicle consignment violations to revoke his license, (3) the doctrine of laches barred the DMV from revoking Watson's license, and (4) the trial court committed reversible error by not excluding, as hearsay, the report regarding Watson's insurance fraud.

We conclude the record establishes Watson provided false information regarding pending criminal charges when he applied for renewal of his license. And the evidence showed Watson admitted he was a partner in the business that violated the Vehicle Code consignment laws. We agree with the trial court that these two grounds provided adequate bases for the DMV's revocation of Watson's license. We further conclude neither res judicata nor collateral estoppel applies because the DMV letter upon which Watson relies was not an adjudication but mere notice of allegations against him. As to laches, Watson has not preserved the claim for appeal. Finally, we conclude any error in admitting the insurance fraud report was harmless. Accordingly, we affirm the trial court's denial of Watson's petition for writ of mandate.

¹ The superior court erroneously omitted the fifth ground for witness intimidation from its recitation of the DMV's grounds for license revocation.

BACKGROUND

The DMV's License Revocation

The trial court found the DMV had sufficient cause to revoke Watson's license based on the false statements he made on his renewal applications and his violation of the Vehicle Code consignment laws. Accordingly, our recitation of the factual background focuses on these two grounds and only briefly touches on the other three grounds for revocation relied upon by the DMV.

Insurance Fraud in 2005

In 2005, Watson sold a new Dodge pickup truck to Jim Dale Hamilton. Hamilton encountered difficulty in making payments on the vehicle and informed Watson. Watson said "that he could make the vehicle disappear, thereby allowing [Hamilton] to report the vehicle stolen to the insurance company." Hamilton agreed and left the truck at Watson's house, as Watson had instructed. When Hamilton returned, he found that custom wheels, DVD, and stereo components had been removed. Watson then told Hamilton to return the vehicle with its keys, registration, proof of insurance, and \$1,000 cash in the glove compartment. Hamilton was instructed to have lunch at a bar and then report the vehicle stolen. Hamilton did as instructed; he reported the vehicle stolen and filed an insurance claim with Allstate Insurance. The vehicle was discovered after it had been set on fire after removal of the tires, rims, and stereo equipment.

Regarding this incident, the DMV administrative law judge found Watson's "acts and conduct during August 2005 constitute fraud and deceit, which arose out of or were related to his employment as a vehicle salesperson. Such fraud and deceit caused Allstate Insurance to sustain a loss and damage."

False Statements in 2010 and 2011

Watson was arrested in December 2005 and charged with insurance fraud as well as witness intimidation. While the criminal case was ongoing, Watson was charged with

two additional felonies in December 2007. Criminal charges against Watson remained pending for almost a decade until October 2014.

In 2010, and again in 2011, Watson applied to the DMV for renewal of his license. On both applications, Watson answered “no” to the question of whether he had any current pending criminal charges against him.

The criminal case against Watson remained pending until October 2014, when the trial court granted the prosecution’s motion to dismiss.

Violation of Vehicle Code Consignment Laws

In June 2009, Juliann Nash² took her son’s vintage Porsche to Showtime³ to consign the vehicle for sale. Watson said he could sell the vintage vehicle for \$40,000 to \$45,000. Watson did not provide a consignment agreement as required by Vehicle Code sections 11729 and 11730.

The Porsche appears to have been sold sometime in February 2010, but the record does not establish the sales price or the identity of the buyer. Showtime did not give an accounting to Nash. Despite repeated inquiries by Nash, Showtime did not pay Nash for nearly two years. Nash netted only \$16,000 from the sale because Showtime required her to pay \$2,500 in repairs to prepare the Porsche for sale.

² During the time of the transaction, Nash went by Juliann Carlson. She subsequently married and changed her surname. As did the DMV administrative law judge and trial court, we refer to Nash by her married name.

³ Watson’s testimony during the DMV administrative hearing indicated there were three “Showtime” entities. However, the distinction between Showtime Wholesale, Inc., Showtime Auto Center, and Showtime Auto & Enterprise, LLC is not clear. During the administrative hearing, the parties seem to have referred to the “Showtime” entities interchangeably. We use “Showtime” to refer collectively to all three entities.

During the DMV administrative hearing, the parties stipulated that “Juliann S. Carlson [Nash], acting on behalf of her son, Todd W. Carlson, the actual owner of Porsche automobile, was not provided a written consignment agreement as required by Vehicle Code sections 11729 and 11730. The parties . . . further stipulated and agreed as true that within 20 days following the sale of the Porsche automobile, the dealer failed to forward money to the consignor, namely Juliann S. Carlson [Nash], the proceeds of sale in the amount of \$16,000.” Thus, the factual issue at the hearing regarding this allegation was whether Watson was a partner in Showtime, which sold the Porsche but failed to comply with the consignment laws.

As to Watson’s status as a partner of Showtime, the evidence showed the following: When the Porsche was delivered to Showtime, Watson told Nash he was an owner of Showtime. Watson admitted during the administrative hearing that he handed Nash a business card listing himself as owner of Showtime. Watson stated he considered himself a partner in Showtime. Watson also acknowledged he and Michael Warda, the other partner in Showtime, reached an agreement in September 2008 to share profits equally. In 2010, he told a DMV investigator that he was a partner in Showtime. During the administrative hearing, Watson admitted making the statement to the investigator in 2010. Documentary evidence showed Watson personally signed two commercial lease agreements on behalf of Showtime Wholesale, Inc. Watson was also signatory on the Showtime bank account as general manager.

Witness Intimidation

The DMV administrative law judge made the following further findings of fact regarding Watson’s commission of further acts involving moral turpitude: “After law enforcement officers in Stanislaus County initiated criminal action against [Watson] on allegations that he was involved in an insurance fraud/grand theft scheme, [Watson] and an associate went to the Modesto, California residence of Jeffrey Allen Martin (victim or

Martin). [Watson] purportedly attempted to unlawfully dissuade from cooperating with law enforcement the victim, who was an identified witness to [Watson]’s acts of insurance fraud and grand theft. The victim was so threatened by [Watson]’s threats that the local district attorney filed a criminal complaint against [Watson] for violating Penal Code section 136.1, subdivision (c)(1) (intimidating a witness).” The DMV administrative law judge determined that “[d]espite the dismissal of the criminal prosecution against [Watson] for witness intimidation, the preponderance of documentary evidence offered by [the DMV] at the hearing of this matter established that [Watson] engaged in bad conduct that showed witness intimidation. The misconduct of intimidating a witness involves moral turpitude.”

The DMV administrative judge ultimately concluded Watson “showed with regard to many material matters advanced at the hearing of this matter, that he was neither a credible nor reliable witness. [¶] [Watson] expressed no regret for the difficulties and anguish sustained by [Nash] or her adult son, Lieutenant Carlson. Although [Watson] had paid tens of thousands of dollars to Allstate Insurance Company for the insurance fraud loss suffered by the corporate person, [Watson] exhibited no regret for the misconduct that led to that company’s losses and damage. And with regard to persons, who were his accomplices in acts of fraud and deceit, [Watson] labeled those individuals as criminals and untruthful persons although [Watson] was the leader of the pack of dishonest persons in past schemes to perpetrate fraud and grand theft.”

STANDARD OF REVIEW

Watson appeals the trial court’s denial of his petition for writ of administrative mandamus. “Where a superior court is required to exercise its independent judgment upon the record of an administrative proceeding, the scope of review on appeal is limited. An appellate court must sustain the superior court’s findings if substantial evidence supports them. (*Pasadena Unified Sch. Dist. v. Commission on Professional Competence*

(1977) 20 Cal.3d 309, 314.) ‘In reviewing the evidence, an appellate court must resolve all conflicts in favor of the party prevailing in the superior court and must give that party the benefit of every reasonable inference in support of the judgment. When more than one inference can be reasonably deduced from the facts, the appellate court cannot substitute its deductions for those of the superior court.’ (*Ibid.*)” (*Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 321.)

DISCUSSION

I

Evidence of Watson’s Lying on the Renewal Applications and Failure to Comply with Vehicle Consignment Statutes

Watson argues the evidence was insufficient to show he knowingly provided false information on his 2010 and 2011 license renewal application. He also argues the evidence was insufficient to show he was a partner in Showtime, the company he admits violated vehicle consignment laws. Watson cites no legal authority in support of either argument, and we would be justified in deeming the arguments forfeited. (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [“When a point is asserted without argument and authority for the proposition, ‘it is deemed to be without foundation and requires no discussion by the reviewing court’ ”].) Nonetheless, we address the contentions in light of their role in helping us address other issues raised by Watson.

A.

Substantial Evidence Standard of Review

Under the substantial evidence rule, we view the record in the light most favorable to the judgment. (*Pope v. Babick* (2014) 229 Cal.App.4th 1238, 1245–1246.) This means we resolve all conflicts in the evidence and draw all reasonable inferences in favor of the judgment. (*Ibid.*) “We emphasize that the test is not the presence or absence of a

substantial conflict in the evidence. Rather, it is simply whether there is substantial evidence in favor of the respondent. If this ‘substantial’ evidence is present, no matter how slight it may appear in comparison with the contradictory evidence, the judgment must be upheld. As a general rule, therefore, we will look only at the evidence and reasonable inferences supporting the successful party, and disregard the contrary showing.” (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.) And the testimony of a single witness, including that of a party, may constitute substantial evidence. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.)

B.

DMV Authority to Revoke License

Vehicle Code section 11806, subdivision (d), allows the DMV to suspend or revoke a vehicle salesperson license whenever a “cause for refusal, suspension, or revocation exists under any provision of Sections 11302 to 11909, inclusive.”

As to the false statements on his DMV applications, Vehicle Code section 11509, subdivision (a)(2), provides the authority for the DMV to revoke Watson’s license if he has “knowingly made any false statement or concealed any material fact in any application or other document filed with the department.”

As to the vehicle consignment violation, Vehicle Code sections 11729 and 11730 provide a basis for revocation of Watson’s license.

C.

False Statements

The trial court found the DMV had introduced substantial evidence of false statements during the administrative hearing on the allegations against Watson. Watson now challenges the evidence as being insufficient to establish he knowingly made false statements on his DMV applications in 2010 and 2011. Watson acknowledges he knew he faced criminal charges starting in 2006. He also concedes

he did not disclose those pending criminal charges on his license renewal application. The record supports these acknowledgments, which suffice to constitute substantial evidence in support of the finding that Watson knowingly made false statements on his renewal application form.

Instead, Watson argues that “[b]ased on the representations of [his] attorney in that matter, [he] believed that the matter would be considered to be a civil compromise in lieu of proceeding in a criminal trial.” In so arguing, Watson recycles the same argument rejected by the DMV’s administrative law judge who disbelieved Watson on this point. The administrative law judge expressly found Watson “was not credible at the hearing of this matter when he claimed that he was not aware that criminal charges were pending against him on the dates in 2010 and 2011 when he made statements upon a department application for license renewal. [Watson] was not persuasive by testifying that as long ago as 2006 or 2007, his criminal defense lawyers informed him that the felony complaint in Stanislaus County for two counts of insurance fraud, grand theft and embezzlement had been ‘resolved by civil compromise.’ And [Watson] unbelievably advanced that he had ‘entered into a verbal agreement’ with the county District Attorney’s Office. . . . Rather, the record indicates that into the year 2014 [Watson] was a felony criminal defendant who was released on bail. Not until October 2014, was the felony complaint dismissed and [Watson]’s bail requirement exonerated.” During the administrative hearing, Watson admitted he ultimately paid \$51,000 in restitution through the Stanislaus County Probation Department. This credibility determination by the administrative law judge is conclusive and requires the rejection of Watson’s substantial evidence claim relating to the charges of knowingly providing false information on a DMV application.

D.

Partnership in Showtime

Watson argues the evidence was insufficient to show he was a partner in Showtime, which he admits violated vehicle consignment laws. Watson points out that he “testified to the use of the word ‘partner’ in describing Warda as a friend, using the salutation partner as they had not completed the paperwork” for a formal partnership. The argument is refuted by the record.

During the administrative hearing, Watson expressly admitted he considered himself a partner of Showtime. Specifically, Watson testified: “And what has been said up here today is correct. I did enter a partnership with [Warda].” The partnership involved an agreement between Watson and Warda to share profits equally. And Watson admitted to a DMV investigator that he was a partner in Showtime. Watson also acted as a partner on behalf of Showtime when he signed leases on behalf of Showtime. And Watson personally handed Nash a business card that listed him as a partner of Showtime. In sum, sufficient evidence established Watson as partner in the business that violated vehicle consignment laws in selling the vintage Porsche for Nash.

II

Res Judicata and Collateral Estoppel

Watson argues that a DMV letter sent to him on November 4, 2011, barred the DMV’s subsequent revocation of his license under the doctrines of res judicata and collateral estoppel. We disagree.

A.

Finality of Prior Judgments

The doctrines of res judicata and collateral estoppel serve to bar parties from relitigating the causes of action and issues that have already been decided. Specifically, “[r]es judicata . . . prevents relitigation of the same cause of action in a second suit

between the same parties or parties in privity with them. Collateral estoppel [issue preclusion] ‘precludes relitigation of issues argued and decided in prior proceedings.’ ” (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896-897 (*Mycogen*)). And, as this court has previously held, “Res judicata and collateral estoppel can be applied to administrative decisions generally. ‘[U]nless a party to a quasi-judicial administrative agency proceeding challenges the adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions.’ ” (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65.) ‘ “[C]ollateral estoppel may be applied to decisions made by administrative agencies ‘[when] an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate. . . .’ ” [Citations.]’ ” (*Noble v. Draper* (2008) 160 Cal.App.4th 1, 11-12 (*Noble*), quoting *People v. Garcia* (2006) 39 Cal.4th 1070, 1076.)

In short, res judicata requires a judgment either by a court or an administrative agency acting in a quasi-judicial capacity. (*Mycogen, supra*, 28 Cal.4th at pp. 896-897.) And collateral estoppel requires (1) an administrative agency acting in a judicial capacity, (2) resolving disputed issues of fact, (3) after the parties have had an opportunity to contest the facts. (*Noble, supra*, 160 Cal.App.4th at p. 11.)

B.

The DMV’s November 14, 2011 Letter

In pertinent part, the letter sent from the DMV to Watson in November 2011 stated:

“Your application dated July 21, 2010, for a vehicle salesperson’s license has been received. After a careful review, it has come to our attention that you have *alleged* violations: [¶] 10/04/10 11729(a) VC Consignment fraud [¶] 11730 VC Failure to provide consignment contract [¶] 12/23-10 11705(a)(1) VC Concealed information on

application. [¶] Grounds exist for refusal of a license pursuant to Vehicle Code Section 11806. Your application is being refused at this time based on *alleged* violations from the Department. [¶] You have a right to a hearing pursuant to Vehicle Code Section 11810(c).” (Italics added, emphasis and capitalization omitted.)

Neither res judicata nor collateral estoppel applies to the DMV’s November 2011 letter because the letter was not a final determination of any legal or factual issues. Instead, the letter merely gave notice of *alleged* violations. The letter did not purport to resolve any disputed issues of fact. And the letter did not adjudicate any legal issues. The DMV’s letter merely informed Watson that his application was being refused based on the allegations and that he had a right to a hearing on the allegations. None of the elements required for the doctrines of res judicata and collateral estoppel are present.

We also reject an assertion by Watson to the effect that “the DMV had the second renewal application in its possession before the decision was made to suspend and/or revoke Watson’s license.” In support of this assertion Watson offers no legal authority. Watson also does not explain how the DMV’s possession of a second application from Watson affects the res judicata and collateral estoppel analyses, which require adjudications. (*Mycogen, supra*, 28 Cal.4th at pp. 896-897; *Noble, supra*, 160 Cal.App.4th at p. 11.) As we have explained, none of the elements required for the application of res judicata and collateral estoppel are present to bar the DMV’s May 2015 revocation action. Accordingly, we reject Watson’s claim that res judicata and/or collateral estoppel apply to bar the revocation of his license in May 2015.

III

Laches

Watson argues the DMV was barred from revoking his license on grounds of laches. The argument has not been preserved for appeal.

A party seeking to rely on laches as a defense to an adverse administrative action must present evidence during the administrative action to support the defense. (*Piscioneri v. City of Ontario* (2002) 95 Cal.App.4th 1037, 1046.) And, in seeking a petition for writ of administrative mandate in superior court, the question of whether a party's action was sufficiently dilatory to warrant the application of the doctrine of laches is a question of fact for the trial court to resolve. (*Ibid.*) To warrant the application of the doctrine of laches, the party claiming the defense bears the burden of proving both that there was an unreasonable delay and that the delay resulted in prejudice. (*Id.* at p. 1049-1050.)

Here, the DMV's administrative decision does not address the issue of laches and makes no factual findings on the issue. Indeed, the administrative decision does not indicate Watson introduced any evidence to prove a claim of laches. The trial court subsequently addressed Watson's belated laches argument. The trial court found no unreasonable delay by the DMV from the time it discovered Watson's violations of the Vehicle Code until the time of the notice of revocation of his license. Because the trial court did not find any unreasonable delay, it did not consider the factual question of prejudice to Watson from any unreasonable delay. Thus, neither the DMV nor the trial court has made any factual determinations on the issue of prejudice. For lack of any evidence on the factual issue of possible prejudice, the claim of laches has not been preserved for appeal. (*Piscioneri, supra*, 95 Cal.App.4th at pp. 1046, 1050.)

IV

Admissibility of a Report Prepared by the District Attorney's Investigator

Watson contends the trial court erred in not rejecting, as hearsay, the contents of an investigative report prepared by Marc Burrell, an investigator for the Stanislaus County District Attorney's Office. We conclude any error was harmless.

We cannot set aside a judgment on the basis of erroneous admission of evidence if the error did not result in a miscarriage of justice. (Evid. Code, § 353; Cal. Const., art. VI, § 13; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

Here, as Watson notes, the Burrell report concerned the insurance fraud involving the arson of Jim Dale Hamilton's truck. However, the trial court did not rely on the Hamilton truck insurance fraud in finding adequate grounds for the license revocation. Instead, the trial court found the revocation of Watson's license was warranted by the consignment violations and false statements on the applications. Consequently, any error in the admission or consideration of the Burrell report was harmless in light of the separate sufficient grounds for Watson's license revocation.

DISPOSITION

The judgment of dismissal is affirmed. The Department of Motor Vehicles shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

_____/s/
HOCH, J.

We concur:

_____/s/
HULL, Acting P. J.

_____/s/
MAURO, J.